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**IN THE
COURT OF APPEALS OF INDIANA**

NICHOLAS J. BARNHILL,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 29A02-0711-CR-950

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0602-FD-27

May 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Nicholas J. Barnhill appeals the three-year sentence imposed after he pled guilty to class D felony possession of marijuana. We affirm.

Issues

Barnhill raises two issues, which we restate as follows:

- I. Whether the trial court abused its discretion in failing to find his guilty plea a significant mitigating factor; and
- II. Whether his sentence is inappropriate based on the nature of the offense and his character.

Facts and Procedural History

On February 10, 2006, Hamilton County deputy sheriff Alex Petty conducted a traffic stop on a vehicle driven by Barnhill. During the stop, Deputy Petty discovered a baggie containing less than thirty grams of marijuana in the waistband of Barnhill's pants.

On February 13, 2006, the State charged Barnhill with class A misdemeanor possession of marijuana and class D felony possession of marijuana.¹ On March 2, 2007, Barnhill pled guilty without a written plea agreement to class D felony possession of marijuana.

On August 10, 2007, citing his prior criminal history, the trial court sentenced Barnhill, to the maximum term of three years, executed. Barnhill appeals.

¹ Indiana Code Section 35-48-4-11 provides in relevant part that possession of less than thirty grams of marijuana is a class A misdemeanor, but if the person has a prior conviction of an offense involving marijuana, hash oil, or hashish, the offense is a class D felony.

Discussion and Decision

I. Guilty Plea

Barnhill argues that the trial court erred in failing to identify his guilty plea as a mitigating factor and attributing significant weight to it. Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (“*Anglemer I*”) clarified on *reh’g*, 875 N.E.2d 218 (“*Anglemyer II*”). “An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Id.* (quotation marks and citations omitted).

If a trial court’s sentencing statement includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating or aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id.* Our supreme court has explained that a trial court may abuse its discretion by (1) failing to enter a sentencing statement; (2) entering a sentencing statement that includes reasons not supported by the record; (3) entering a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* at 490-91. However, a trial court cannot now be said to have abused its discretion in failing to properly weigh aggravating and mitigating circumstances when imposing a sentence. *Id.* at 491.

Although Barnhill did not argue that his guilty plea was a significant mitigating factor at sentencing, the State acknowledges that “a defendant’s guilty plea is entitled to some mitigating weight.” Appellee’s Br. at 4 (citing *Anglemyer II*, 875 N.E.2d at 220). However, not all guilty pleas are entitled to significant mitigating weight. *Anglemyer II*, 875 N.E.2d at 221. The defendant must show that any alleged mitigators are both significant and clearly supported by the record. *Id.* The significance of a defendant’s guilty plea depends on the extent to which it demonstrates the defendant’s acceptance of responsibility and/or whether the defendant received a substantial benefit in return for the plea. *Id.* Where the decision to plead guilty is a pragmatic one, the plea is not necessarily entitled to significant mitigating weight. *Id.*

Barnhill has failed to persuade us that his guilty plea was a reflection of his acceptance of responsibility. Rather, the evidence in the record suggests that his decision to plead guilty was a pragmatic one. He was caught red-handed with the marijuana. The presentence investigation report (“PSI”) reveals that Deputy Petty stopped him for making an illegal U-turn. While Barnhill suggests that he may have had grounds for a motion to suppress, the record does not support an inference that such a motion would be successful. We decline his invitation to speculate.

We also observe that more than a year had passed after charges had been filed when Barnhill decided to plead guilty. The State had already provided discovery materials to the defense, and a jury trial had been set twice before he pled guilty. Thus, valuable time and resources were expended. We conclude that the trial court did not abuse its discretion in failing to find his guilty plea a significant mitigating factor.

II. Inappropriate Sentence

Under Article 7, Section 6 of the Indiana Constitution, we have the constitutional authority to review and revise sentences. Indiana Appellate Rule 7(B) states: “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” “Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied.” *Purvis v. State*, 829 N.E.2d 572, 588 (Ind. Ct. App. 2005) (quotation marks and internal citations omitted), *trans. denied*.

Regarding the nature of the offense, our consideration of an appropriate sentence begins with the advisory sentence for the offense committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). The advisory sentence for a class D felony is one and one-half years’ imprisonment, while the maximum sentence, which the trial court imposed here, is three years. *See* Ind. Code § 35-50-2-7(a). The State concedes that the nature of Barnhill’s offense alone does not require a sentence above the advisory. Appellee’s Br. at 5.

On the other hand, the evidence as to the nature of his character indicates that the three-year term is appropriate. At twenty-nine years old, Barnhill has a lengthy history of substance abuse. He has been convicted of four crimes involving either possession or dealing of marijuana. He has also been convicted of driving while intoxicated. He has been placed on probation twice, and each term of probation was revoked. While he has retained his job at Noble Romans despite his drug abuse problems, Barnhill has been unable to maintain the

discipline and self-control needed to stay drug-free. He admitted in the PSI that he “routinely used illegal drugs while on probation, but remained drug free while in prison.” PSI at 31. Given the nature of his character, we conclude that a three-year sentence is appropriate.

Affirmed.

BARNES, J., and BRADFORD, J., concur.